

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARRY HUTCHINS,

Plaintiff,

-against-

DHS, et al.,

Defendants.

21-CV-1221 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff Barry Hutchins, appearing *pro se*, brings this action under the Court's federal question jurisdiction. By order dated February 11, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). For the reasons set forth in this order, the Court dismisses this action but grants Plaintiff sixty days' leave to replead.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P.* 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff Barry Hutchins filed a handwritten complaint. It is difficult to read the complaint or to determine who he intends to sue. Plaintiff also asserts claims regarding numerous seemingly unrelated issues. It appears that Plaintiff is homeless, and he has not provided an address where he can receive court orders.

Plaintiff alleges that from September 2020 to the present, he has had difficulties with various public assistance benefits (SNAP, cash assistance) and social security benefits, at offices in both Brooklyn, New York, and Manhattan. Plaintiff further seeks to be “moved from Rockland County to BRC,” which is a nonprofit organization that operates homeless shelters, transitional housing, and provides other social services. Plaintiff notes that Bellevue Hospital indicates that he has “no serious injuries,” but he states that he has “cold in chest” and injuries to his feet, ankles, and ears. Plaintiff seeks to have his federal Social Security Income checks reissued and to “remove [the] pin number” for his direct express debit card, which the Social Security Administration uses to issue payment to those without access to a bank.

DISCUSSION

A. Rule 8 Pleading Requirements

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. A complaint states a claim for relief if the claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To review a complaint for plausibility, the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in the pleader’s favor. *Iqbal*, 556 U.S. at 678-79 (citing *Twombly*, 550 U.S. at 555). But the Court need not accept “[t]hreadbare recitals of the elements of a cause of action,” which are essentially legal conclusions. *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). After separating legal conclusions

from well-pleaded factual allegations, the court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

The Court has closely scrutinized Plaintiff's complaint but because Plaintiff has not included facts about his claims, he fails to state a claim on which relief can be granted. The Court therefore dismisses the complaint for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Leave to Replead

The Second Circuit has held that “[a] *pro se* complaint should not [be] dismiss[ed] without [the Court’s] granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Dolan v. Connolly*, 794 F.3d 290, 295 (2d Cir. 2015) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation marks omitted)). Because it is unclear if Plaintiff may be able to state a claim, the Court grants Plaintiff leave to replead within sixty days of the date of this order. In the event that Plaintiff chooses to file an amended complaint, the Court strongly encourages him to ask for assistance from someone who can help him with the amended complaint. If Plaintiff needs legal advice related to this matter, he may contact the New York Legal Assistance Group’s Legal Clinic for Pro Se Litigants in the Southern District of New York, which is a free legal clinic staffed by attorneys and paralegals to assist those who are representing themselves in civil lawsuits in this Court. A copy of the flyer with details of the clinic is attached to this order.

B. Litigation History

Plaintiff has previously been cautioned that his complaints are difficult to understand, which leaves the Court unable to determine whether he is entitled to relief. *See Hutchins v. City of New York*, ECF 1:19-CV-0550, 4 (CM) (S.D.N.Y. Aug. 7, 2019); *Dept. of Homeless Svrs.*,

ECF 1:17-CV-4826, 4 (S.D.N.Y. Aug. 21, 2017).¹ The Court therefore warned Plaintiff in those actions that if he continues to engage in frivolous or non-meritorious litigation in this Court, the Court may enter an order barring him from filing civil actions in this Court IFP without the Court's permission. *See Hutchins*, ECF 1:17-CV-4826, 5 (S.D.N.Y. Nov. 20, 2017). That warning remains in effect.

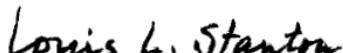
CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket. The Clerk of Court is further instructed to hold this matter open on the docket until a civil judgment is entered.

Plaintiff's complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed for failure to state a claim on which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court grants Plaintiff sixty days' leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within sixty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 21-CV-1221 (LLS). An Amended Complaint form is attached to this order. If Plaintiff fails to submit an amended complaint within the time allowed, the Court will enter a civil judgment consistent with this order and direct the Clerk of Court to terminate this matter.

Dated: February 11, 2021
New York, New York



Louis L. Stanton
U.S.D.J.

¹ Because of Plaintiff's history of filing frivolous or non-meritorious litigation in the United States District Court for the Southern District of Texas, that court imposed a prefiling injunction against him. *See Hutchins v. Simpson*, No. 01-MC-0420, (S.D. Tex. Nov. 14, 2011).



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To make an appointment for a consultation, call (212) 659-6190 or come by either clinic during office hours. Please note that a government-issued photo ID is required to enter either building.

The clinic offers in-person appointments only. The clinic does not offer assistance over the phone or by email.



Disclaimer: The information contained herein is for informational purposes only and is not legal advice or a substitute for legal counsel, nor does it constitute advertising or a solicitation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of _____
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____.

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of _____
the State of _____
and has its principal place of business in the State of _____
or is incorporated under the laws of (foreign state) _____
and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

First Name	Middle Initial	Last Name
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Street Address

County, City	State	Zip Code
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Telephone Number	Email Address (if available)
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B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	
<hr/>		
Current Job Title (or other identifying information)		
<hr/>		
Current Work Address (or other address where defendant may be served)		
<hr/>		
County, City	State	Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence:

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.